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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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*Ex parte* RAMZI EL-FEKIH, GUOQIANG LIU, ALAAELDIN A. ALY,
MOEZ AYED, MOHAMED BATTISHA, and MODESTO TABARES

_____

Appeal 2009-006405
Application 09/932,739
Technology Center 2400

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Before, ROBERT E. NAPPI, JOHN C. MARTIN, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges.*

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

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This is a decision on appeal under 35 U.S.C. § 134(a) of the final
rejection of claims 1, 3-7, 9, 11-12, 14, 16-18, 20-21, 23-24, 46, 48-52, 54,
56-57, 59, 61-63, 65-66, 68-69, 91, 93-97, 99, 101-102, 104, 106-108, 110-
111, and 113-114.[2]  We have jurisdiction under 35 U.S.C. § 6(b).

We affirm the Examiner's rejection of these claims.

## INVENTION

The invention is directed to a method, system, and computer program
product for managing a network service.  Client quality specifications are
established and data is collected and analyzed to verify that the client's
quality requirements have been met.  *See* Spec: 1-6.  Claim 1 is
representative of the invention and reproduced below:

> 1.  A method of managing a service, comprising the steps of:
>     obtaining service quality requirements from a client;
>     collecting quality data from a network that comprises a
> plurality of network elements, comprising:
>         querying at least one access network element for the
> quality data, the at least one access network element is one of
> those network elements of the plurality of network elements
> that are configured at an edge of the network and provide
> access to the network;
>         saving the quality data in a repository;
>         analyzing the quality data; and
>         saving the analyzed quality data in the repository; and
>     comparing the collected quality data with the service quality
> data requirements to determine if the service quality
> requirements are satisfied.

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[2] Claims 2, 35-45, 47, 80-90, 92, and 125-135 were cancelled.  Claims 8, 10,
13, 15, 19, 22, 25, 26-34, 53, 55, 58, 60, 64, 67, 70-79, 98, 100, 103, 105,
109, 112, and 115-124 are objected to as being dependent upon a rejected
base claim.  Final Office Action 2.

REFERENCES

| Chen | US 5,831,972 | Nov. 3, 1998 |
| Riggan | US 5,898,673 | Apr. 27, 1999 |
| Lin | US 6,405,250 B1 | Jun. 11, 2002 (filed Jan. 25, 1999) |
| Poulin | US 6,545,979 B1 | Apr. 8, 2003 (filed Nov. 27, 1998) |
| Yaakov | US 6,748,433 B1 | Jun. 8, 2004 (filed Jul. 10, 2000) |

REJECTIONS AT ISSUE

Claims 1, 3-7, 16-17, 20-21, 46, 48-52, 61-62, 65-66, 91, 93-97, 106-107, and 110-111 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yaakov in view of Lin. Ans. 3-9.

Claims 9, 11-12, 14, 54, 56-57, 59, 99, 101-102, and 104 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yaakov in view of Lin and Riggan. Ans. 9-11.

Claims 18, 63, and 108 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yaakov in view of Lin, Riggan, and Poulin. Ans. 11-12.

Claims 23-24, 68-69 and 113-114 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yaakov in view of Chen. Ans. 12-13.

ISSUE

Appellants argue on pages 6-10 of the Appeal Brief and pages 2-4 of the Reply Brief that the Examiner's rejection of claims 1, 3-7, 9, 11-12, 14,

16-18, 20-21, 23-24, 46, 48-52, 54, 56-57, 59, 61-63, 65-66, 68-69, 91, 93-97, 99, 101-102, 104, 106-108, 110-111, and 113-114 is in error. Appellants argue that it is not obvious to combine Yaakov with Lin to meet the claimed limitations of independent claims 1, 46, and 91. App. Br. 8; Reply Br. 3-4. Claims 3-7, 9, 11-12, 14, 16-18, 20, 21, 23-24, 48-52, 54, 56-57, 59, 61-63, 65-66, 68-69, 93-97, 99, 101-102, 104, 106-108, 110-111, and 113-114 are dependent upon claims 1, 46, and 91 (respectively).

Thus, with respect to claims 1, 3-7, 9, 11-12, 14, 16-18, 20-21, 23-24, 46, 48-52, 54, 56-57, 59, 61-63, 65-66, 68-69, 91, 93-97, 99, 101-102, 104, 106-108, 110-111, and 113-114, Appellants' contention presents us with the issue: Did the Examiner err in finding it obvious to combine Yaakov with Lin?

FINDINGS OF FACT (FF)

*Yaakov*

1. Yaakov discloses a method and system wherein data is collected from Remote Test Units (RTU) by a Quality Management Server (QMS). Col. 8, ll. 7-20.

2. Quality parameters are obtained by the RTUs from access units 16. Col. 7, ll. 16-25.

*Lin*

3. Lin discloses a system wherein Network Elements (NE) report to a Network Management System (NMS) through an associated management agent. Col. 3, ll. 40-46.

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4. The data from the NEs is collected periodically at internal timeout events, when a parameter exceeds its threshold value, when an NE has a problem communicating, or when a polling request is issued by the Network Management System.  Col. 6, ll. 12-23.


ANALYSIS

*Rejections over Yaakov in view of Lin*

Appellants' arguments have not persuaded us that the Examiner erred in rejecting claims 1, 46 and 91.  Appellants argue that neither of the references includes any motivation to combine Yaakov with Lin.  App. Br. 6.  Appellants provide several supporting arguments that we will address later in this discussion.  First, we note that the Supreme Court stated that an explicitly stated motivation to combine the references is seen as "helpful insight," *KSR Int'l Co. v. Teleflex Inc*, 550 U.S. 398,  418 (2007), but that the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.  *Id*. at 416.  Furthermore, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.  *Id.* at 417.

Yaakov discloses a method and system wherein a Quality Management Server (QMS) collects data from Remote Test Units (RTU).  FF 1.  The RTU's obtain quality parameters from access units 16.  FF 2.  Lin discloses a system wherein a Network Management System (NMS) collects status information from network elements (NE) through its associated management agent.  FF 3.  This data is collected at periodic interval timeout

events, when a threshold value is exceeded, when there are communication problems, or when the NMS issues a polling request to the NE. FF 4. Both systems collect data for a network. Therefore, we consider using Lin's ability to issue a poll request to the NE with Yaakov's RTU 20 as nothing more than using a known element to perform its known function of obtaining particular network information, when requested. As such, we find that the combination of Lin with Yaakov yields the predictable result of receiving specific information about the network when requested.

Further, even though explicit motivation to combine the references is not required (*see KSR, supra*), the Examiner has provided a motivation to combine the references. Ans. 5. The Examiner stated that the combination "enable[s] the network element to report network status/parameters upon a triggering of an external event, e.g. a polling request (equivalent to querying)" (Ans. 5 (quoting Lin, col. 6, ll. 12-19)) and has concluded that combining the teachings of Yaakov and Lin

> enabl[es] quality data to be collected from a network [element] upon a triggering of an external event, i.e., query from a data collecting unit (the existing RTU 20 of Yaakov) sent to the access network element (access unit 16 of Yaakov), thereby freeing up the processing resources of both the data collecting unit and the access network element in an absent of triggering of an external event.

Ans. 16.

Appellants argue that one skilled in the art would not be motivated to combine the intrusive data collection design of Yaakov with the passive, non-intrusive design of Lin as such a combination would be duplicative since Yaakov's Remote Test Units (RTU) and Lin's network elements would both be tasked with collecting quality data. App. Br. 8. We do not

find this argument to be persuasive. The intent of the combination is not to have the RTU and the NE both collect the quality data, but rather to modify the RTU to allow it to query access unit 16, which will collect the quality data. The duplication asserted by Appellants therefore will not occur. For the same reason, we are also unpersuaded by Appellants' argument that "[b]ecause Yaakov's and Lin's designs are fundamentally different, their combination would be duplicative as discussed above, resulting in increased expense and complexity." *Id.*

Further, Appellants argue that the Examiner's stated motivation is derived from hindsight reasoning. App. Br. 8. However, the motivation to combine the references is found in the Lin reference. Lin states that in order for the network management system to gather data, the network elements must either report the data or respond to a request. FF 4. The querying request fulfills the latter requirement. FF 4.

Accordingly, for the reasons stated above, we sustain the Examiner's rejection of independent claims 1, 46, and 91 and dependent claims 3-7, 16-17, 20-21, 46, 48-52, 61-62, 65-66, 91, 93-97, 106-107, and 110-111, which are grouped with claims 1, 46, and 91.

*Rejections over Yaakov in view of Lin and Riggan*

Appellants' contentions have not persuaded us of error in the Examiner's rejection of claims 9, 11-12, 14, 54, 56-57, 59, 99, 101-102, and 104, which are dependent upon claims 1, 46, and 91 (respectively). Appellants present the same arguments as to these claims that are discussed above with respect to claims 1, 46, and 91. These arguments are unpersuasive for the same reasons as stated above. As a result, we sustain

the Examiner's rejection of claims 9, 11-12, 14, 54, 56-57, 59, 99, 101-102, and 104.

### *Rejections over Yaakov in view of Lin, Riggan, and Poulin*

Appellants' contentions have not persuaded us of error in the Examiner's rejection of claims 18, 63, and 108, which are dependent upon claims 1, 46, and 91 (respectively). Appellants present the same arguments discussed above with respect to claims 1, 46, and 91. These arguments are unpersuasive for the same reasons as we stated above. As a result, we sustain the Examiner's rejection of claims 18, 63, and 108.

### *Rejection over Yaakov in view of Chen*

Appellants' contentions have not persuaded us of error in the Examiner's rejection of claims 23-24, 68-69 and 113-114. Appellants present the same arguments discussed above with respect to claims 1, 46, and 91, which we find to be unpersuasive for the same reasons as we stated above. As such, we sustain the Examiner's rejection of claims 23-24, 68-69 and 113-114.

## CONCLUSION

The Examiner did not err in finding it obvious to combine Yaakov with Lin and the other cited references.

## SUMMARY

The Examiner's decision to reject claims 1, 3-7, 9, 11-12, 14, 16-18, 20-21, 23-24, 46, 48-52, 54, 56-57, 59, 61-63, 65-66, 68-69, 91, 93-97, 99, 101-102, 104, 106-108, 110-111, and 113-114 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136 (a)(1)(v).

<div align="center">AFFIRMED</div>

ELD

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